

Testimony of Dan Pickett, Chairman
Rail Labor Division, Transportation Trades Department, AFL-CIO
Committee on Commerce, Science and Transportation
Subcommittee on Surface Transportation and Merchant Marine
United State Senate
February 25, 1998

Mr. Chairman and Members of the Committee. I appreciate the opportunity to testify today on rail safety, an important subject to the country and to the railroad employees who work hard every day operating the rail system.

My name is Dan Pickett, and I am the President of the Brotherhood of Railroad Signalmen, the rail union which represents employees who install and maintain the signaling system for the nation's railroads. I am also the Chairman of the Rail Labor Division of the Transportation Trades Department, AFL-CIO, and I am here today representing all of the rail labor unions and the many employees in the railroad industry for whom safety is a daily worry.

Rail safety is an important issue for rail employees because they are at great risk. Working around heavy equipment moving at great speed is inherently dangerous. I have seen studies saying that one out of 10 rail employees is injured every year. And railroads are dangerous not only to the employees, but to the general public, as hazardous cargoes travel through communities across America. The danger requires vigorous oversight and a continuing effort to improve safety performance.

I am pleased to be able to say that the Federal Railroad Administration (FRA) is aware of the critical role that it plays in protecting communities across the country and the lives of

employees, and for the first time in over a decade, they are seriously addressing safety issues. Administrator Molitoris has changed the attitude of the FRA for the better to focus on important safety issues.

While we don't always agree with their decisions or how long it takes for them to make decisions, I can tell you that for the first time in years they understand that their role is to improve safety performance. That shouldn't be a big deal, but it is, because for over a decade the FRA ignored safety whenever they could. And rail employees and communities paid the price.

While I want to praise the efforts of the FRA, I also want to be clear that we have only begun to address safety problems in the rail industry. We have a long way to go.

Let me describe some of the problems we face and why they are critical.

Regulatory Issues

The Federal Railroad Administration plays a vital role, and funding and staffing for safety functions are critical. We are pleased that the FY98 budget increased nearly 12% over FY97 from \$51 million to \$57 million; and the proposed FY99 budget is another 8.8% increase, to \$62 million.

The FRA has established a Rail Safety Advisory Council, which has been working hard and cooperatively on many rail safety issues. Again I want to applaud the Administrator for this initiative and the progress that has been made. But this can be a process that takes too long, and even when the parties reach consensus, a cost-benefit and OMB review are required, adding months or years to the process. We strongly recommend that when the parties reach consensus, the implementation of the rule be timely and automatic.

There have been suggestions that the FRA should move from specific and enforceable regulations to so-called "performance standards." This would be a tragic error, relying on the fox to guard the chicken coop, which would only increase what unfortunately occurs now — railroads disciplining or threatening to discipline employees if they report accidents or injuries.

The railroads favor vague and subjective performance standards that permit them to do the work of reporting, while opposing sound regulation they describe as a system of “command and control.” They insist on command and control of their employees, to the point of using the discipline process to silence employees so accidents and injuries go unreported, but they believe the safety agency should rely on generalities in assessing their safety performance.

For the FRA to correct safety problems the agency must know what is going on. Railroads are required currently to report accident, injuries or incidents immediately. It is usually the employee on the scene who is responsible for this reporting. When he calls the report in to management, he is asked if he realizes what will happen if there is a report made in writing. This means that a formal investigation is forthcoming and that he will most likely be charged. When an investigation is held, management is the arresting officer, judge, jury and court of appeals.

Every employee knows how the system works. Report an injury and there will be an investigation. The employee can be disciplined for failing to file a report on time, leaving out details of an accident, or many other reasons. Employees are regularly told not to seek professional medical attention because that would make an injury “reportable.”

The data currently supplied to FRA about injuries is simply wrong. Employees are intimidated into not reporting injuries and other incidents so the railroads can claim their safety record is good. All too often, the Harriman Award, given to the railroad with the best safety record, goes to the railroad with the best system for suppressing accident and injury reports.

We need stronger penalties against intimidation, both because it is wrong, but also because it distorts the information provided to the FRA about what is going on. Using discipline of a rail worker to suppress accident reporting or interfering with the delivery of medical care should be made a criminal offense. And the last thing we want to do is move to a system that will further encourage intimidation.

Human Factors

Whenever there is a railroad accident, the first words out of the mouth of management are “human error.” Some employee trying to do his or her job gets blamed, and often fired, because the railroad does not want to admit that there is a systemic problem.

Train accidents, personal injury and rail related fatalities are more than occasional moments of bad luck or bad judgement. They are preventable tragedies that are a manifestation of an entire system designed to run dangerously close to the edge. Our nation’s railroad carriers continue to push the envelope, and the recent accidents we have seen are symptomatic of a much larger problem affecting the industry.

Safety features which have existed for decades are removed by the railroads. Automatic train stop technology, which has been around since the 1920's and 1930's, has been removed by the railroads. There is a continuous flow of petitions to remove railroad signaling systems.

The technology to prevent accidents is available, but not used by the rail industry because it costs money. The real human causes of accidents are the elimination of essential personnel on trains, operationally induced cumulative fatigue, improper accident/incident reporting, the use of unqualified personnel to perform safety functions, and other practices which reduce the use of essential personnel. These practices may improve the bottom line, but they are the causes of accidents.

Critical Areas

While there are many critical safety areas that need improvement, I want to touch on a couple of particular importance as part of my testimony.

First, there is the issue of fatigue. All of the essential safety personnel involved with the railroads face the same problem of fatigue. Whether the employee is an engineer, a signalman, a track worker, a mechanic or a brakeman, the problem is the same. Railroads workers are on call and can be required to work for too long with too little rest. The Hours of Service Act, which was designed to protect the public safety by requiring rest, does not provide adequate protection.

Let me give you an example of what is required of a rail employee. An operating employee in Chicago was required to work five straight 12 hour days, and then was required to

work two more days because no one else was available. Because he was exhausted, he then tried to take a day off every day for the next seven days, but no luck. No one else was available, so he had to work. After two 84 hour weeks, 14 straight days, he fell asleep awaiting additional instructions, and the railroad suspended him. This is not an isolated case.

We know a lot more about fatigue and how it affects the performance of employees. Instead of pretending there is no problem, we should change the rules to make the railroads safer, by ensuring that employees are in proper shape to do their job.

Federally mandated safety regulations are routinely ignored by the railroads. Mechanical inspections by qualified personnel are essential to prevent dangerous equipment from continuing in service, and safety regulations require it. For example, there is a 1000 mile air brake inspection. These regulations require the inspector to walk the length of the train on both sides, to determine whether the air brakes on each and every car apply and release. On several occasions, these inspections have supposedly been performed on a train of over 100 cars in under twenty minutes — simply not possible. We need real inspections by qualified personnel.

As the railroads merge, we see an alarming increase in the amount of traffic on so-called core lines. As traffic increases, it becomes even more difficult to keep trains operating efficiently.

Positive Train Control Systems, technology to guarantee safer operation of high-speed congested systems, exists today, but is not widely used by the rail industry because they do not want to make the capital investment.

With all the technology that exists today, it is foolish, and dangerous to the public, not to have electronic technology in place in the rail industry. Amtrak currently uses automatic train control in the Northeast Corridor, and requires others using the corridor to use it also.

UPS, Federal Express and others can tell you more about the location of an individual package electronically than the nation's railroads can tell you about the location of a freight train carrying thousands of tons of hazardous chemicals. The technology is there for the rail industry — on the shelf, ready to buy and install, but they have chosen not to do so.

We have been pushing the FRA to require positive train separation systems. In 1994, we filed a petition asking FRA to put a system in place, and we continue to push for improved technology to make the rail system safer. But our experience tells us, regrettably, that unless the Congress pushes, it will not happen.

It is simply remarkable that at a time when the communications revolution is changing the world -- we can learn instantaneously about financial developments in Asia; we can have medical tests performed and analyzed by medical professionals hundreds or thousands of miles away; we can maintain an air traffic control system that moves millions of people a day — but we have railroads carrying thousands of tons of deadly chemicals thousands of miles on trains where the engineer of the train has no electronic equipment to remind him if he missed a signal light at the side of the track. To me it is simply incomprehensible, and we should do something about it.

The last item I would like to raise is the role of the Surface Transportation Board on safety issues in mergers. We have seen the affects of recent mergers, and we await an STB decision on a current one. There should be no question that safety is a prime consideration in mergers and other transactions, regardless of the size of the railroads involved. All applicants seeking Board approval for a transaction should be required to submit sufficient information so that the Board, with the input of the Federal Railroad Administration, can make a complete and reliable safety evaluation.

The Board should enter into a joint rulemaking with the FRA on this subject. What subject could be more important in a merger or other transaction than safety, and we have very recent examples where safety has been harmed, not advanced, by transactions approved by the STB.

Conclusion

There is much to accomplish to make the nation's railroads safer for communities across the country and for the employees. Experience teaches us clearly that it is the Congress that must provide the leadership to make safety a reality in the rail industry. I hope we can work together to see that improved safety practices become a reality.

I appreciate the opportunity to testify today, and provide this brief overview on safety from the employees who are responsible for safe operations and pay the price for unsafe conditions with their lives. Obviously, safety is a complex problem with many parts. I would like the opportunity to submit further statements for the record, laying out in more detail many of the problems I have only touched on today.

I would be pleased to answer any questions.